

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

AUG 7 2001

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
)	ORDER
VS.)	
)	
JEFFREY WALKER,)	
)	CAUSE NO. A-1428
)	
RESPONDENT.)	

This matter came on for hearing on the 28th day of April, 2001, before Linda R. Sanchez-Masi, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Manual Montelongo. Jeffrey Walker ("Respondent") was present and was represented by an attorney, James C. Zalewski. Respondent testified in his own behalf. Rosalie McKnight, daughter of Jack and Vera Blakeman of Merna, NE, Barbara Ems, a Department Consumer Affairs Investigator, and Ron Lobb, a Department Life and Health Analyst, testified on behalf of the Department. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. Evidence was introduced. Respondent objected to Exhibits #9 and #14, the former on the basis of hearsay and lack of foundation, and the latter as hearsay. The matter was taken under advisement. Exhibit #9 is accepted for the purpose of reciting the terms of the endorsement issued to the Blakemans, and to demonstrate that the lawsuit which the Blakemans had filed against Equitable Life and Casualty Company and an insurance agency was settled. Exhibit #14 is accepted to illustrate which insurance policy Respondent sold to the Blakemans, that the policy did not provide for

assisted living care, and that assisted living coverage was ultimately extended to the Blakemans via an endorsement to the Equitable Short Term Nursing Care Recovery Plan. As a result of the hearing, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.
2. Respondent, twenty-three (23) years of age, whose current registered address with the Department is 19901 Giles Road, Gretna, NE 68028, is a licensed resident Nebraska insurance agent, as evidenced by Exhibit #2.
3. The Department filed a Petition and Notice of Hearing on or about February 26, 2001, which were served upon Respondent by mailing the same to his address of record by certified mail, return receipt requested. Respondent received the Petition and Notice of Hearing on or about March 5, 2001, as evidenced by the return receipt card attached to Exhibit #1.
4. Respondent filed an Answer on or about April 19, 2001, and the Department filed a Reply on or about April 19, 2001.
5. The Department, in its Petition, alleged that Respondent had violated a Nebraska insurance law, specifically *Neb. Rev. Stat. §44-4028*, which provides that the director may revoke or suspend any person's license for such period as may be determined to be appropriate if, after notice to the licensed person and hearing, the director determines that such person has: (3) Misrepresented the terms of any existing or proposed insurance contract to the detriment of the applicant or insured; and (11) Not demonstrated trustworthiness and competence to transact business in such a manner as to safeguard the public.

6. Respondent was a sub-agent of the Omaha Division Insurance Agency, as evidenced by Exhibit #8.

7. On or about May 1, 2000, Respondent called on Jack and Vera Blakeman of Mera, NE, as evidenced by Exhibit #8, to sell them a long term care insurance policy to replace one which had lapsed.

8. The Blakemans purchased an Equitable Life and Casualty Insurance Company ("Equitable") long term care policy from Respondent.

9. On or about January 30, 2001, Equitable issued the Blakemans an endorsement to the long term care policy the Blakemans purchased from Respondent, to cover assisted living care, as evidenced by Exhibit #19. Equitable and the Omaha Division Insurance Agency have agreed to share the expense of the additional benefits (assisted living care), as evidenced by Exhibit #4.

10. Rosalie McKnight testified that she and both her parents, Mr. and Mrs. Blakeman, were present during Respondent's presentation of an Equitable long term care policy. The policy discussed was a Short Term Nursing Care Recovery Plan, as evidenced by Exhibits #8 and #15.

11. At the time of the presentation, Ms. McKnight testified that her parents had a Conseco Senior Health Insurance Company ("Conseco") Nursing Home policy in force which covered assisted living care. (See Exhibit #13). This policy paid \$100 per day of assisted living care for a period of up to two years, as evidenced by Exhibit #13. Ms. McKnight testified that Respondent told her parents and herself that the Equitable policy would be more economical and have all the same benefits as the other Conseco policy. Ms. McKnight testified that Respondent made specific mention of the Equitable policy covering assisted living facilities, including the Off-Broadway Apartments facility located in Broken Bow, NE.

12. Ms. McKnight testified that she and her parents believed that the policy they purchased from Respondent covered assisted living. Ms. McKnight stated that on or about December of 2000, Mr. and Mrs. Blakeman sought admittance to the aforementioned Off-Broadway Apartments. They were informed by Equitable that their policy did not cover assisted living. The Blakemans contacted an attorney and filed a lawsuit against Equitable and the insurance agency for which Respondent was a sub-agent. Equitable and the Blakemans settled the lawsuit, with Equitable writing an endorsement to the policy to provide coverage for assisted living (see Exhibits #11 and #18). Ms. McKnight testified that her parents are currently residing at the Off-Broadway Apartments, and that Equitable is covering the assisted living expenses under an endorsement, which Equitable issued to the Blakemans as part of the settlement of the lawsuit. (See Exhibits #16, #17, #19 and #24.)

13. Respondent testified that he had been selling insurance since January of 2000. He received on-the-job education with an insurance agency in Omaha. He stated that he had had no specific education with Equitable. Respondent continued that during his presentation to the Blakemans, he filled out various documents including a coverage comparison form (see Exhibit 25) and a confidential analysis form (see Exhibit #21). Respondent, in filling out the coverage comparison form, testified that he did not check "assisted living" as a component of either the "Equitable" policy or the "other" policy to which the Equitable policy was compared, because, at the time of the presentation, he believed assisted living was covered under the "alternative plan of care". Respondent testified that he didn't know how to fill out the document. Respondent further testified that he told the Blakemans that assisted living would be covered under the "alternative plan of care." Ms. McKnight testified that she did not recall hearing Respondent speak of "alternate plan."

14. The Equitable policy issued did not cover assisted living, as evidenced by Exhibits #3 and #14.

15. Barbara Ems, an Department Consumer Affairs Investigator, testified that she wrote to Respondent about the Blakeman matter (see Exhibit #5). Respondent, whose written statement contrasts with his testimony at the hearing, responded to the Department inquiry, as evidenced by Exhibit #10, and stated:

I did not state that the short term care policy had assisted living benefits. I do remember Mr. Blakeman asking if the policy would work with the nursing home in Broken Bow. I did reply that yes it would, referring to the nursing home not the assisted living facility . . . I do not know why the Blakemans believed the short term care policy had an assisted living benefit. I did not state that to them at anytime.

Respondent continued that in his written statement, he highlighted a section of a "Recovery Care Short Stay Policy Outline – Form 690", which he gave to the Blakemans, which recites that a nursing home or nursing care facility does not include assisted living arrangements. (See Exhibit #10).

16. The Respondent testified that he never claimed the policy had assisted living as a "primary benefit", but that based on the information contained in Exhibit 23 (general information brochure pertaining to long term care insurance), "assisted living facility" was listed under a heading of "Long Term Care Facilities & Alternatives", and therefore he assumed the policy would cover assisted living. Respondent continued, that in his statement to the Department (see Exhibit #10), he was trying to get across that assisted living was not a primary part of the policy, and that the Department letter sent him, said assisted living was a primary in the policy. The Department inquiry sent to Respondent on or about January 29, 2001, as evidenced by Exhibit 5, does not contain any reference to assisted living as a primary benefit. Respondent also testified that he also relied on an Equitable form listing benefits under "Short Term Care Policy" (see Exhibit #20), which led him to the conclusion that

assisted living would be covered under the “alternate plan”. Exhibit #20 contains no indication that the item “Alternate Plan of Care” would cover assisted living care. “Respondent further testified that Exhibit 20 recites that coverage is good in any facility nationwide, and that there is nothing on that form excluding assisted living facilities.

17. Respondent, in his testimony about his sales presentation to the Blakemans, stated that the referenced Equitable policy covered assisted living care. The Equitable policy did not cover assisted living care. Respondent misrepresented the terms of the policy to the Blakemans.

18. Ms. McNight testified that her parents purchased the Equitable policy because Respondent told them that it was more economical than the policy they had in force, and that it had the same coverage. Furthermore, based on Respondent’s statement that the policy covered assisted living care, they believed that their assisted living needs would be met.

19. The purchase of the Equitable policy, the terms of which Respondent misrepresented, was to the Blakeman’s detriment, because there was no assisted living coverage, and they were forced to obtain legal representation and file a lawsuit in order to obtain coverage for assisted living care, a benefit they believed to be covered by the policy.

20. Respondent, in his testimony, acknowledged that he did not understand many of the aspects relating to the sale of the Equitable policy in question. Respondent testified that he did not know what an “endorsement” was.

21. Respondent lacks certain basic knowledge and competency relating to the sale of long term care insurance, and he also lacks understanding of certain general insurance terms.

22. Respondent did not demonstrate trustworthiness and competency in selling long term care insurance to the Blakemans.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb.Rev.Stat. §44-101.01 and §44-4001 et seq.
2. The Department has personal jurisdiction over Respondent.
3. The Respondent violated Neb.Rev.Stat. §44-4028 (3) and (11).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that:

Respondent pay an administrative penalty of \$1000. It is further recommended that if full payment is not received on or before thirty (30) days from the date the Director signs this Order, grounds shall exist for a hearing to be called wherein Respondent shall show cause why his Nebraska resident insurance agent's license shall not be revoked. It is also recommended that Respondent take twelve (12) hours of continuing education: six (6) hours of Long Term Care insurance education and six (6) hours Medicare Supplement insurance education. Furthermore, it is recommended that Respondent shall, within thirty (30) days of the day the Director signs this Order, contact Beverly Creager, Administrator of the Licensing Division of the Nebraska Department of Insurance, to make arrangements for enrollment in continuing education courses pertaining to Long Term Care insurance and Medicare Supplement insurance as designated by Ms. Creager. It is recommended that Respondent successfully complete the designated courses within sixty days following his enrollment in said courses. It is also recommended that if Respondent fails to successfully complete the aforementioned continuing education courses within the designated time frame, grounds shall exist for a hearing to be called wherein Respondent shall show cause why his Nebraska resident insurance agent's license shall not be revoked.

Dated this 31st day of July, 2001.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Linda R. Sanchez-Mari
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance vs. Jeffrey Walker, Cause No. A-1428.

Dated this 31st day of July, 2001.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. Tim Wagner
L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent in care of James C. Zalewski at 1225 L. Street, #400, P.O. Box 81607, Lincoln, NE 68501-1607 by certified mail, return receipt requested, on this 7th day of August, 2001.

Stacey M. Bullock